

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 5, 2008 Session

MARN SUZANNE LARSEN-BALL v. WILLIAM GORDON BALL

**Appeal from the Chancery Court for Knox County
No. 166176-2 Jon Kerry Blackwood, Judge**

No. E2007-02220-COA-R3-CV - FILED NOVEMBER 13, 2008

This appeal concerns the division of a marital estate following the dissolution of an eighteen-year marriage. The principal asset at issue is a \$17 million attorney's fee received by Husband seven months after Wife filed for divorce. The trial court classified the fee as a marital asset. Husband contends this was error because he had not been awarded the fee when Wife filed for divorce and insists that it is his separate property. Both parties also appeal the trial court's distribution of the marital estate. We find the trial court correctly classified the attorney's fee as marital property and affirm the division of the marital estate.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which ANDY D. BENNETT, J., joined. PATRICIA J. COTTRELL, P.J., M.S., not participating.

Thomas S. Scott, Jr., Knoxville, Tennessee, and Thomas C. Jessee, Johnson City, Tennessee, for the appellant, William Gordon Ball.

Valerie T. Corder, Memphis, Tennessee, for the appellee, Marn Suzanne Larsen-Ball.

OPINION

Marn Suzanne Larsen-Ball (Wife) and William Gordon Ball (Husband) were married on August 12, 1989, in Knox County, Tennessee. Prior to the marriage, Husband had been an assistant United States Attorney and had practiced law approximately fifteen years, while Wife's employment experience included retail management positions. After the parties were married, Husband returned to private practice handling criminal defense, personal injury, and class action lawsuits, and Wife became a stay-at-home mother to the parties' two children, born April 22, 1990, and April 26, 1991. During the course of the parties' eighteen-year marriage, Husband became a very successful class action attorney earning a substantial income, which allowed the family to live a lavish lifestyle, which included multiple residences and a private airplane.

Wife filed for divorce on January 31, 2006, on the grounds of irreconcilable differences and inappropriate marital conduct. Seven months after Wife filed for divorce, Husband was awarded and

received a \$17 million contingency fee, which arose out of a class action lawsuit he had worked on for several years during the marriage.¹ Thereafter, Wife filed a Motion for Partial Summary Judgment to have the \$17 million classified as marital property. The trial court granted the motion and classified the fee as marital property.

When the case went to trial on August 28 and 29, 2007, the division of marital property was the only issue. In the Order entered September 3, 2007, the trial court found the value of the marital estate to be \$29,650,000 and awarded Husband approximately 60% of the marital estate and Wife 40% of the marital estate.² Subsequently, both parties appealed.

ANALYSIS

There are two issues dispositive of this appeal. One, whether the trial court erred in classifying the \$17 million fee as marital property. Two, whether the trial court erred in its distribution of the marital estate. We will address each in turn.

CLASSIFICATION OF THE \$17 MILLION FEE AS MARITAL PROPERTY

Tennessee is a “dual property” state and an asset may not be included in the marital estate unless it is classified as “marital property.” *Smith v. Smith*, 93 S.W.3d 871, 875-76 (Tenn. Ct. App. 2002). The division of a married couple’s estate begins with the classification of the property as either marital property or separate property. *Miller v. Miller*, 81 S.W.3d 771, 775 (Tenn. Ct. App. 2001). Property classification is a question of fact, *Bilyeu v. Bilyeu*, 196 S.W.3d 131, 135 (Tenn. Ct. App. 2005), which we review the trial court’s classification using the familiar standard of review in Tenn. R. App. P. 13(d).

The statutory definition of “marital property” is as follows:

“Marital property” means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date. . . . All marital property shall be valued as

¹Husband was awarded a gross fee of \$29 million; however, the net amount he personally received, after various deductions including income taxes, totaled \$17 million. For purposes of this appeal, we refer to the amount of the attorney’s fee award as \$17 million.

²In response to a post-trial motion, the trial court found, *inter alia*, that Husband’s date of acquisition of the \$17 million fee from the South Carolina class action litigation was August 31, 2006. Thus, the trial court found that Husband acquired the asset seven months after the complaint for divorce was filed and one year prior to the final hearing.

of a date as near as possible to the date of entry of the order finally dividing the marital property.

Tenn. Code Ann. § 36-4-121(b)(1)(A).

Conversely, the statutory definition of “separate property” is as follows:

(A) All real and personal property owned by a spouse before marriage, including, but not limited to, assets held in individual retirement accounts (IRAs) as that term is defined in the Internal Revenue Code of 1986, as amended;

(B) Property acquired in exchange for property acquired before the marriage;

(C) Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1);

(D) Property acquired by a spouse at any time by gift, bequest, devise or descent;

(E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and

(F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.

Tenn. Code Ann. § 36-4-121(b)(2)(A)-(F). A spouse’s “separate property” is not “marital property” and, therefore, separate property is not to be included in the marital estate. *Woods v. Woods*, No. M2002-01736-COA-R3-CV, 2005 WL 1651787, at *3 (Tenn. Ct. App. July 12, 2005).

Husband contends the trial court erred by classifying the \$17 million fee he received after Wife filed her Complaint for divorce as marital property. He contends it was not marital property because he did not own the asset “as of the date of filing” of the complaint for divorce. We respectfully disagree, as did the trial court.

Although the definition of “marital property” may be somewhat ambiguous, the definition of “separate property” is not, and we find no basis upon which to conclude that the fee Husband earned during the marriage and possessed at the time of the divorce is his separate property.

Because Tennessee is a dual property state, an asset owned by a spouse is either marital property or separate property. *See Smith*, 93 S.W.3d at 875-76. There is no third or “other” category in which to classify the asset at issue. Therefore, the \$17 million asset Husband possessed at the time of the divorce must be classified as either marital property *or* separate property. We have examined the definition of separate property and find that the \$17 million asset does not come within the purview of any of the six definitions of separate property. Furthermore, the parties were not divorced and the trial court had not divided or made a final disposition of the marital property

pursuant to an order of legal separation prior to Husband's receipt of the \$17 million fee.³ As Tenn. Code Ann. § 36-4-121(b)(1)(A) provides, if the trial court had divided the marital property as part of an order of legal separation prior to Husband acquiring the \$17 million fee, that asset, as well as any asset he acquired thereafter, would be "deemed separate property." See Tenn. Code Ann. § 36-4-121(b)(1)(A) (stating "If the marital property is divided as part of the order of legal separation, any property acquired by a spouse thereafter is deemed separate property of that spouse.")

Although Husband did not own the asset, the \$17 million fee, as of the filing of the complaint for divorce, the asset was acquired by Husband during the course of the marriage, he possessed it as of the date of the final divorce hearing, and the trial court had not previously made a final disposition of the marital property pursuant to an order of legal separation. Based upon these facts, we have determined that the asset, the \$17 million fee, is marital property.

Accordingly, we affirm the classification of the \$17 million fee, which was on deposit in Husband's personal account at the time of the divorce, as marital property.

DISTRIBUTION OF THE MARITAL ESTATE

Having determined the attorney's fee at issue was properly classified as marital property, we must now look to whether the trial court erred in its division of the marital estate.

Once a trial court has classified the property as either marital or separate, it should place a reasonable value on each piece of property subject to division, and the parties have the burden of proof to come forward with competent valuation evidence. *Kinard v. Kinard*, 986 S.W.2d 220, 231 (Tenn. Ct. App. 1998); *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987). When valuation evidence is conflicting, the court may place a value on the property that is within the range of the values represented by all the relevant valuation evidence. *Watters v. Watters*, 959 S.W.2d 585, 589 (Tenn. Ct. App. 1997); *Brock v. Brock*, 941 S.W.2d 896, 902 (Tenn. Ct. App. 1996). Decisions regarding the value of marital property are questions of fact, *Kinard*, 986 S.W.2d at 231, and such decisions will not be second-guessed unless they are not supported by a preponderance of the evidence. *Smith v. Smith*, 93 S.W.3d 871, 875 (Tenn. Ct. App. 2002); *Ray v. Ray*, 916 S.W.2d 469, 470 (Tenn. Ct. App. 1995).

After the marital property has been valued, the trial court is to divide the marital property in an essentially equitable manner. Tenn. Code Ann. § 36-4-121(a)(1); *Miller v. Miller*, 81 S.W.3d 771, 775 (Tenn. Ct. App. 2001). A division of marital property is not rendered inequitable simply because it is not precisely equal, *Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002), *Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996), or because each party did not receive a share of every piece of marital property, *Morton v. Morton*, 182 S.W.3d 821, 833-34 (Tenn. Ct. App. 2005); *Manis v. Manis*, 49 S.W.3d 295, 306 (Tenn. Ct. App. 2001).

³Pursuant to Tenn. Code Ann. § 36-4-121(b)(1)(A), had either party filed for a legal separation, the trial court could have made a final disposition of the marital property "either at the time of entering an order of legal separation or at the time of entering a final divorce decree, if any." Tenn. Code Ann. § 36-4-121(b)(1)(A).

Dividing marital property is not a mechanical process but rather is guided by carefully weighing the relevant factors in Tenn. Code Ann. § 36-4-121(c). *Flannary v. Flannary*, 121 S.W.3d 647, 650-51 (Tenn. 2003); *Tate v. Tate*, 138 S.W.3d 872, 875 (Tenn. Ct. App. 2003); *Kinard*, 986 S.W.2d at 230. Trial courts have broad discretion in fashioning an equitable division of marital property. *Jolly v. Jolly*, 130 S.W.3d 783, 785 (Tenn. 2004); *Fisher v. Fisher*, 648 S.W.2d 244, 246 (Tenn. 1983), and appellate courts must accord great weight to a trial court's division of marital property, *Wilson v. Moore*, 929 S.W.2d 367, 372 (Tenn. Ct. App. 1996); *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1989). Accordingly, it is not our role to tweak the manner in which a trial court has divided the marital property. *Morton*, 182 S.W.3d at 834. Rather, our role is to determine whether the trial court applied the correct legal standards, whether the manner in which the trial court weighed the factors in Tenn. Code Ann. § 36-4-121(c) is consistent with logic and reason, and whether the trial court's division of the marital property is equitable. *Jolly*, 130 S.W.3d at 785-86; *Kinard*, 986 S.W.2d at 231.

The parties' have amassed a substantial estate, including large bank accounts, certificate of deposits, automobiles, and investment properties. Husband's attorney's fee from the class action litigation amounts to \$17 million of the marital estate, which the trial court valued at \$29,650,000. The trial court awarded Husband approximately sixty percent of the marital estate and Wife approximately forty percent. Specifically, the trial court awarded Wife half of the marital residence and half interest in six other marital properties, including condos in Florida and Tennessee. The trial court also awarded Wife \$3,000,000 in cash together with certificates of deposit valued at nearly \$5.8 million, a note valued by the court at \$750,000, a vehicle, and furnishings.

Husband contends the distribution of marital property was inequitable considering (1) that nearly sixty percent of the marital property consists of the \$17 million attorney's fee, (2) the health of the parties, (3) Wife's unwillingness to work, (4) Wife's "spendthrift ways," (5) Wife's management of the household, (6) the respective contributions of the parties to the marital property, and (7) Wife's lack of contributions to the maintenance of the marital estate following the filing of divorce. Husband argues that Wife should be awarded \$8.5 million as her equitable share in the marital estate. Alternatively, Wife contends she is entitled to at least fifty percent of the marital estate.

The trial court noted that it considered the factors set out in Tenn. Code Ann. § 36-4-121 in determining an equitable division of the parties' marital property. Specifically, the trial court made specific findings as to Wife's good health, her education, and her ability to earn between \$30,000 and \$35,000 per year. Alternatively, the court found Husband's health to be questionable given his two heart attacks and recent surgery to have stints placed, but found that he has a substantial earning capacity "if his health does not fail." The trial court also made a finding that Husband was a successful attorney prior to marriage, while Wife brought no assets to the marriage. Further, Wife's role as a homemaker was noted along with the parties' "sumptuous" lifestyle, which "has freed the wife from some of the ordinary travails of a housewife."

As the trial court noted, both parties were awarded a substantial estate. Husband's ability to continue earning a substantial income is dependent on his health. Husband was a successful

attorney prior to the marriage and has been the sole wage earner during the course of the marriage. Over half of the value of the marital estate consists of the \$17 million attorney's fee awarded to Husband seven months after Wife filed for divorce. Husband's receipt of an award of this scale was extraordinary and not likely to be repeated in the near future. However, Wife was awarded significant cash assets that will allow her to continue living the life to which she has become accustomed.

After a thorough review of the record, we find that the trial court applied the correct legal standards and weighed the relevant factors set out in Tenn. Code Ann. § 36-4-121(c). We also find the division of the marital estate is consistent with logic and reason and the division to be equitable.⁴ We therefore affirm the division of the marital estate.

FRIVOLOUS APPEAL

For her part, Wife has requested that we declare this appeal frivolous and award her costs and attorney's fees on appeal. We do not find Husband's appeal frivolous, and therefore deny Wife's request for her costs and attorney's fees.

IN CONCLUSION

The judgment of the trial court is affirmed and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the parties equally.

FRANK G. CLEMENT, JR., JUDGE

⁴ In her brief, Wife also requested that she not be a co-owner of the condominiums with Husband and that she be awarded cash instead. The decision to make the parties co-owners, as opposed to separating their interests or awarding cash, was within the discretion of the trial court. The trial court did not abuse its discretion in making this decision. Moreover, in its September 3, 2007 Order, the trial court afforded the parties the right to demand a sale at auction of one or more of the properties if they have not sold within eight months of the final judgment. For the foregoing reasons, we find no basis to disturb the decision of the trial court.